

## **ORDINANCE O-4446**

**AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, AMENDING ORDINANCE O-4439, ADOPTING INTERIM ZONING REGULATIONS REGARDING THE RETAIL SALE OF RECREATIONAL MARIJUANA, INCLUDING LOCATIONAL RESTRICTIONS, PROVIDING FOR SEVERABILITY, AND APPROVING A PUBLICATION SUMMARY.**

WHEREAS, Initiative 502 (I-502) approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana; and

WHEREAS, the Washington State Liquor Control Board has adopted rules pertaining to the licensing of marijuana producers, processors, and retailers and has accepted applications, and is beginning to issue licenses for these marijuana businesses; and

WHEREAS, the State Liquor Control Board has determined that two state licenses for the retail sale of recreational marijuana may be issued for the City of Kirkland; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

WHEREAS, following a public hearing on March 18, 2014, the City Council passed Ordinance O-4439 adopting interim zoning regulations regarding the retail sale of recreational marijuana; and

WHEREAS, the City Council has continued to review how to reconcile the needs of the residents and businesses of Kirkland with respect to the retail sale of recreational marijuana, with Initiative 502, and the rules promulgated by the Washington State Liquor Control Board; and

WHEREAS, the City Council believes that health, safety, and welfare of the community is best served by imposing interim regulations with reasonable limitations to avoid locating recreational marijuana retail outlets next to incompatible uses, while permanent Zoning Code amendments are considered; and

WHEREAS, on June 17, 2014, the City Council conducted a public hearing to take public testimony on the adoption of interim zoning regulations; and

WHEREAS, on June 10, 2014, a State Environmental Policy Act addendum was issued on this proposed ordinance; and

WHEREAS, the Council now desires to supplement the interim zoning regulations for the retail sale of recreational marijuana by amending Ordinance O-4439; and

WHEREAS, the City has the authority to enact interim zoning regulations under RCW 35A.63.220 and RCW 36.70A.390;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Findings. The recitals set forth above are incorporated as findings of fact in support of the interim regulations imposed by this ordinance. The City Council further finds as follows:

- a. The City Council wishes to exercise its police power authority granted under article XI, section 11 of the Washington Constitution to promote public safety, health, and welfare, but expressly disclaims any intent to exercise authority over marijuana uses in way that would conflict with the federal Controlled Substances Act;
- b. It is the intent of these interim zoning regulations to ensure that marijuana retail outlets are not located where the use could cause inappropriate off-site impacts;
- c. The Market Street Corridor (MSC) MSC 1 and MSC 2 zones are in close proximity to a Kirkland School Walk Route developed with a crosswalk and flashing beacon;
- d. Allowing recreational marijuana uses in Light Industrial Technology (LIT) zones primarily adjoining commercial zones lessens the potential for traffic conflicts with residential neighborhoods;
- e. The City Council desires to create regulations that address the particular needs of the residents and businesses of Kirkland and coordinate with Initiative 502 and the rules promulgated by the Washington State Liquor Control Board regarding recreational marijuana;
- f. Under these interim regulations there remain other potential sites within the City where the zoning would permit retail marijuana outlets and the properties appear to be located more than 1,000 feet from public parks, elementary and secondary schools, child care centers, and public transit centers, the minimum criteria of the State Liquor Control Board; and
- g. The City Council has also determined that City staff shall draft permanent Zoning Code amendments for referral to the Planning Commission for review, public hearing, and recommendation by the Planning Commission.

Section 2. Amendment. Ordinance O-4439 is amended as shown in Section 3 below.

### Section 3. Interim Zoning Regulations.

a. Except as prohibited in subsections (b) and (c) below, marijuana retail outlets licensed by the Washington State Liquor Control Board and fully conforming to state law may locate in the following use zones:

1. Use zones where Retail Establishments are allowed;
2. Light Industrial Technology (LIT) zones determined by the City as having at least 50 percent of the boundaries of such zone adjoining commercial zones; and
3. Totem Lake (TL) TL 7 and TL 9 zones.

b. No marijuana retail outlet may locate in the Market Street Corridor (MSC) MSC 1 and MSC 2 zones.

c. Marijuana retail outlets shall not locate on any site abutting a street or public right of way that includes a Kirkland School Walk Route as shown on Exhibit 1.

d. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.

e. In addition to the security requirements promulgated by the Washington State Liquor Control Board in Washington Administrative Code (WAC) Chapter 315-55, during non-business hours, all useable marijuana, marijuana-infused product, and cash on the premises of a marijuana retail outlet shall be stored in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached to the structure. Useable marijuana products that must be refrigerated or frozen may be stored in a locked refrigerator or freezer, provided the refrigerator or freezer is affixed to the building structure.

f. These interim zoning regulations shall be enforced using the procedures and penalties for violations of the Zoning Code established under Kirkland Municipal Code Chapter 1.12, "Code Enforcement."

Section 4. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

a. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the

stalks, oil or cake made from the seeds of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plan which is incapable of germination.

b. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

c. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

d. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

e. "Kirkland school walk routes" means the school walk routes adopted by the City Council based upon the walk routes identified by the Lake Washington School District within a one-mile radius of all public elementary schools in the City.

f. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 5. Duration. The interim zoning regulations adopted by this Ordinance shall be in effect for a period of six months from the effective date of Ordinance O-4439 and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 6. Work Plan. The City staff is directed to draft permanent Zoning Code amendments. The proposed amendments shall be referred to the Kirkland Planning Commission for review, public hearing, and recommendation for inclusion in the Kirkland Zoning Code.

Section 7. Severability. Should any provision of this Ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

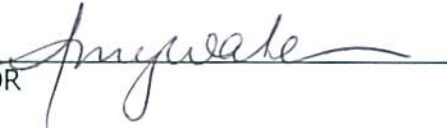
Section 8. Declaration of Emergency. Based upon the recitals and findings set forth above, the City Council declares a public emergency exists requiring that this ordinance take effect immediately.

Section 9. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

Section 10. Publication. Publication of this ordinance shall be pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote plus one of the Kirkland City Council in open meeting this 17th day of June, 2014.

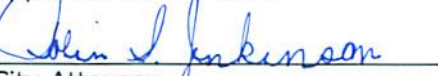
Signed in authentication thereof this 17th day of June, 2014.

  
MAYOR

Attest:

  
City Clerk

Approved as to Form:

  
City Attorney